

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

EXELON GENERATION LLC¹

Employer

and

Case 4–RC–20670

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO,
on behalf of INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
LOCAL 614²

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

The Employer, Exelon Generation LLC, a wholly owned subsidiary of Exelon, Inc., generates and sells electrical power. The Petitioner, International Brotherhood of Electrical Workers, AFL-CIO, on behalf of International Brotherhood of Electrical Workers, Local Union 614, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of about 10 Material Coordinators employed at generating facilities operated by the Employer in eastern Pennsylvania and Maryland. The Employer contends that the petition should be dismissed because the Material Coordinators are managerial employees.³ A Hearing Officer of the Board held a hearing, and the parties filed briefs with me.

I have considered the evidence and the arguments presented by the parties, and for the reasons set forth below I find that the Material Coordinators are managerial employees based on their exercise of discretion in making substantial purchases for the Employer. Accordingly, I have dismissed the petition.

¹ The Employer’s name appears as amended at the hearing.

² The Petitioner’s name appears as amended at the hearing.

³ At the hearing, the Employer also contended that a unit of Material Coordinators is inappropriate even if they are not found to be managerial employees, but the Employer did not explain why it was inappropriate nor pursue this claim in its brief. Because I find that the Material Coordinators are managerial employees, it is unnecessary to reach this issue.

In this Decision, I will first provide an overview of the Employer's operations. Then I will present the relevant case law for determining managerial status. Finally, I will present in detail the facts and reasoning in support of my conclusion.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer has three operating groups – Exelon Power, Exelon Nuclear, and the Exelon Power Team. Exelon Power manages facilities that generate electricity from fossil fuels, water power, and other renewable energy sources; Exelon Nuclear manages the Employer's nuclear generating facilities; and the Exelon Power Team coordinates power production.

The Exelon Power operating group, which is headquartered in Kennett Square, Pennsylvania, is subdivided into six departments – MidAtlantic Operations, Northeast Operations, Engineering, Construction, Human Resources, and Business Operations. A Vice President is in charge of each department.

The MidAtlantic Operations and Northeast Operations departments manage the plants that produce the electrical power. MidAtlantic Operations is responsible for nine plants located in Pennsylvania and Maryland (Eddystone, Cromby, Delaware, Schuylkill, Croyden, Richmond, Fairless Hills, Conowingo, and Muddy Run), and two plants in Texas,⁴ while Northeast Operations oversees plants in New England. The four remaining departments provide support services to MidAtlantic and Northeast Operations. The Material Coordinators are part of the Supply group in the Business Operations Department.

The Supply group purchases the Employer's equipment and supplies. John Heller is the Supply Group Director. Reporting to Heller are Supply Manager Frank Hagan and Inventory Manager Jim McMenamin. Hagan supervises a group of five Purchasing Agents and Commodities Analysts who are responsible for all purchases of services, purchases of supplies and equipment in excess of \$25,000, and the negotiation of "blanket orders" permitting the Employer to buy unlimited quantities of an item from a particular vendor at a specified price. McMenamin is in charge of the 10 Material Coordinators and Materials Supervisor Pete Lydinski.

II. FACTORS RELEVANT TO DETERMINING MANAGERIAL STATUS

Managerial employees are excluded from the coverage of the Act and are not entitled to be accorded bargaining rights. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 289 (1974). Managerial

⁴ Neither party contends that Material Coordinators who work at the Employer's two Texas plants should be included in the unit.

employees are defined as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer. To be considered managerial, an individual must exercise discretion within, or even independently of, established employer policy. *NLRB v. Yeshiva University*, 444 U.S. 672, 682-683 (1980). The determination of an employee's managerial status depends on the extent of his or her discretion, and an employee who exercises limited discretion, bordering on routine performance, will not be deemed managerial. *Eastern Camera & Photo Corp.*, 140 NLRB 569, 571 (1963).

The Board has traditionally viewed as managerial individuals who exercise discretion in making purchases on behalf of their employer. *ITT Grinnell*, 253 NLRB 584 (1980); *Simplex Industries, Inc.*, 243 NLRB 111, 113 (1979); *Albuquerque Div., ACF Industries, Inc.*, 145 NLRB 403, 414-415 (1963); *Kearney & Trecker Corp.*, 121 NLRB 817, 822 (1958); *Mack Trucks, Inc.*, 116 NLRB 1576, 1577-1578 (1956). The ability to commit an employer's credit in substantial amounts, especially when accomplished through the exercise of discretion that is not ordinarily reviewed, is strong evidence of managerial status. *Concepts & Designs, Inc.*, 318 NLRB 948, 956-957 (1995), *enfd.* 101 F.3d 1243 (8th Cir. 1996). Employees who make purchases on behalf of their employers will not be deemed managerial, however, where their discretion is restricted significantly by the employer's guidelines or the need to clear their decisions with higher authorities. *The Washington Post Company*, 254 NLRB 168, 189 (1981); *Bell Aerospace, A Division of Textron, Inc.*, 219 NLRB 384 (1975).

III. FACTS

Material Coordinators' Job Duties

Five of the Material Coordinators are assigned to the Eddystone facility, which is the largest of the Employer's eastern Pennsylvania and Maryland plants – Mike O'Malley, John Marinari, Rod Bowden, Scott Cromie, and Howard Cole. Materials Supervisor Lydinski also has his office at Eddystone, although he periodically visits all nine of the plants in the area. Material Coordinator Joe Semetti is assigned to the Cromby plant, Denny Cortes covers the Delaware and Schuylkill plants, John Tomkinson is responsible for the Croyden, Richmond, and Fairless Hills plants, and Bob Gill is assigned to the Connowingo and Muddy Run plants. Jim Schulte is a rover who substitutes for other Material Coordinators when they are absent or on vacation.

The Eddystone Material Coordinators each perform specialized functions, although they are cross-trained and substitute for each other as needed. Cole and Bowden purchase supplies and equipment for the Eddystone plant and contact suppliers to determine when time sensitive items can be expected. One of them attends periodic meetings held to review upcoming maintenance work and reports on when needed supplies and equipment can be expected.

Marinari is responsible for arranging for the repair or replacement of defective equipment. When equipment breaks down, Marinari is notified and contacts either the manufacturer or other vendors to determine the cost of repair. Depending on the cost and the time frame required for repair,

Marinari decides whether the item should be fixed or replaced. He arranges for repair or replacement if less than \$25,000 is involved or refers the matter to a Purchasing Agent if the cost is in excess of \$25,000.

Cromie receives equipment and supplies delivered to the Eddystone plant, checks for defects and quantity, and then places the supplies in the proper place in the storeroom. Cromie also dispenses items to plant personnel as needed and inventories items in the storeroom to make certain there are sufficient quantities.

O'Malley performs an inventory control function at all nine Pennsylvania and Maryland plants. He periodically reviews the items stored at the plants to determine whether they are needed. Assuming O'Malley decides a particular item should no longer be maintained in stock, he checks to ensure that plant supervision agrees and then asks Lydinski to make arrangements to dispose of the unnecessary material.

The Material Coordinators assigned to locations other than Eddystone perform all of the duties handled by the four Eddystone Material Coordinators other than O'Malley. Thus, they make purchases up to \$25,000, track deliveries, and attend meetings to report on the anticipated delivery date of supplies. They receive items delivered to their storerooms, check for defects, and distribute material to plant personnel as needed. They also arrange for the repair or replacement of broken equipment, place material in the storerooms, and conduct any required inventories.

Each of the plants has a storeroom in which supplies and equipment are kept. The Material Coordinators work in these storerooms and adjacent offices at the plants. Material Coordinators are paid pursuant to the Employer's pay schedule for non-management employees. They are not required to have four-year college degrees.

Lydinski testified that the Material Coordinators spend about 75 percent of their time performing purchasing functions and the remainder performing receiving and inventory control work. In connection with their receiving duties, they sometimes operate forklifts.

Material Coordinators' Purchasing Responsibilities

Purchases made by the Material Coordinators must conform to general guidelines established by the Employer. According to these guidelines, Material Coordinators have the authority to make purchases up to \$25,000 without securing approval from a superior. Some purchases originate with the Employer's computerized record keeping system, which automatically notifies the appropriate Material Coordinator if the quantity of an item kept in stock drops below the optimum amount. Material Coordinators also receive requests for supplies or equipment from plant personnel. Upon receipt of a request, the Material Coordinator checks to see if the item is in stock. If not, and if it costs less than \$25,000, he makes arrangements for purchase. When items covered by blanket purchase orders are requested, the Material Coordinator simply places an order for the requested amount and is not involved in selecting the vendor or negotiating the price.

In other cases, a request will be made for the purchase of an item from a particular vendor. The Material Coordinators review such requests to make certain there is a legitimate reason to use that vendor and submit the order if they determine the request is appropriate. These single source requests must be approved by supervision if the amount involved is over \$10,000.

Where there is no blanket purchase order or single source request, the Material Coordinator selects the vendor who will supply an item. Bids need not be solicited if a purchase of less than \$2,000 is involved. If a purchase is for more than \$2,000, the Material Coordinator will obtain a minimum of three bids and then select the vendor based on an evaluation of various factors including price, quality, and time of delivery. Material Coordinators are encouraged to negotiate with vendors over price and are expected to secure at least \$10,000 annually in negotiated savings. The Employer's guidelines set forth the procedures for purchasing the items.

Most bids are solicited from vendors who have supplied items in the past, and the Employer's computer system will only generate purchase orders for vendors included in the system. However, Material Coordinators can solicit bids from new vendors and have them added to the system. Material Coordinators are encouraged to solicit bids from minority contractors and are evaluated on the number of new minority vendors they locate. They may also recommend to Materials Supervisor Lydinski that the Employer cease doing business with a supplier and that the supplier be removed from the Employer's computer system.

Each of the Material Coordinators has a credit card, which may be used to purchase non-stock items. They purchase supplies to be placed in stock using computer generated purchase orders. Lydinski does a monthly check of credit card purchases to make certain the Material Coordinators are buying only authorized items.

Purchase orders for less than \$25,000 do not have to be approved. Material Coordinators may issue purchase orders for over \$25,000 with Lydinski's approval, and Lydinski testified that such approval is routinely granted.

Material Coordinator O'Malley's inventory control duties do not require him to make purchases with any frequency. The other Material Coordinators, however, made substantial numbers of purchases in the year ending April 30, 2003, involving significant sums. The number of purchases for the other Material Coordinators ranged from a low of 193 to a high of 1173, and the total amounts of the purchases ranged from \$65,000 to \$562,000.

IV. ANALYSIS

The Material Coordinators have the authority to make purchases for the Employer, and they regularly exercise that authority. For purchases of less than \$25,000, they have the discretion to select the vendor without any review by higher-level personnel. They are encouraged to negotiate with

vendors over price and may seek out new vendors if existing vendors cannot satisfy the Employer's requirements. The Employer's policies governing the purchasing function are very general and primarily establish the procedures to be followed. They do not interfere with the Material Coordinators' exercise of discretion in locating and selecting vendors and negotiating over price, quality, and delivery requirements. In short, the Material Coordinators exercise considerable discretion in making purchases on the Employer's behalf, and this discretion is not significantly limited by Employer-issued guidelines or the need to consult with higher management. As purchasing has long been found to be determinative of managerial authority, I find that the Material Coordinators are managerial employees. *Concepts & Designs, Inc.*, supra; *Simplex Industries Inc.* supra; *Albuquerque Division, ACF Industries, Inc.*, supra. Cf. *The Washington Post Company*, supra. Accordingly, the petition is dismissed.

V. CONCLUSIONS

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EDT on **August 21, 2003**.

Signed: August 7, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four

460-5033-7500

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